ARC 4984C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to outdoor advertising signs

The Department of Transportation hereby amends Chapter 117, "Outdoor Advertising," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 306B.3, 306C.11, 306D.4 and 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 306B and 306C; Iowa Code section 306D.4; 23 U.S.C. 131; and 23 CFR 750.705(h).

Purpose and Summary

This rule making amends Chapter 117 and concerns the regulation of outdoor advertising signs on private property. The amendments ease some placement restrictions for companies that are applying for new sign locations, remove all fees for signs measuring 32 square feet or less, and alter the method used to determine when a sign is destroyed. The following paragraphs explain the amendments in more detail:

Definitions. The amendments add definitions of "destroyed" and "widening" due to the changes included within subrule 117.5(5) and new subrule 117.6(10).

The definition of "modification" is amended to exclude situations where the trim on the advertising sign has been reduced or eliminated. Modern industry practice is to use less trim than was used for the advertising signs constructed in the 1970s and 1980s. Provided the actual copy size for the advertisement remains the same, the size of the trim is not a factor that will be used to determine if a sign has been modified. This exclusion will eliminate the cancellation of a permit for a reason which is not of substantial importance.

The definition of "nonconforming sign" is amended to more accurately reflect the definition in the Code of Federal Regulations (CFR). The current definition narrows the eligible situations to only those regarding size and spacing requirements. In contrast, 23 CFR 750.707(b) and 23 CFR 750.707(d)(4) include all legally erected and lawfully maintained signs which subsequently fail to meet state requirements. The Department has followed the more inclusive and traditionally accepted definition of "nonconforming" set forth in the federal regulations.

Effect of scenic byways. This rule making amends paragraph 117.3(1)"l" to state that although the erection of advertising signs is prohibited along scenic byways, the signs that already exist at the time a highway is designated as a scenic byway may remain in existence subject to normal permitting requirements. Federal law, 23 U.S.C. 131(s), prohibits the erection of new advertising signs, not the continued maintenance and permitting of signs already in existence along the scenic byways.

LED sign spacing. The amendments make changes to subrule 117.5(5) to establish the same spacing requirements for LED signs as standard traditional signs. The Federal Highway Administration conducted an eye-glance tracking study which found that overall attention to the forward roadway was not decreased when properly regulated LED signs were present in the surrounding environment. Therefore, a more restrictive spacing standard for LED signs is not necessary. LED signs, however, will continue to be regulated by subrule 117.3(1) so that messages do not flash, scroll, move, or change at a rate of less than eight seconds per message in accordance with the federal guidance issued in September 2007.

Spacing requirements between interchanges. This rule making amends subrule 117.5(5) concerning areas between interchanges where continuous acceleration and deceleration lanes exist. Rather than having these areas completely blocked out for advertising purposes, this amendment will make these areas eligible for permitting provided that the placement of the sign is not within 250 feet of the point at which lanes join/separate with the mainline. This standard will be more consistent with the rest of the subrule because only 250 feet is protected from the ramp taper in cases where the ramp does taper to a close. Driver attention at places where merging is necessary is likely higher than where merging is not required. Therefore, a more restrictive standard for the latter does not serve a compelling safety interest, and it is not required by federal law. Due to these amendments to subrule 117.5(5), a definition of "widening" is added in rule 761—117.1(306B,306C) to describe the point where the measurement begins for the 250 feet of protection for each scenario.

Applications required for each face. This rule making amends subrule 117.6(1) so that, without exception, permits are required for each face of an advertising sign. The original purpose behind allowing owners of smaller signs to obtain just one permit for a sign with a face on each side was to cap the fees (initial fee and annual renewal fee) to one permit only. However, because of the amendments to subrule 117.6(2) to completely exempt owners of small signs from any fees at all, there is less of a need to retain this exception. In addition, the Department's electronic permitting system associates a unique permit number for each sign face for billing and spacing purposes.

Exempt fees for small signs. This rule making amends subrule 117.6(2) to exempt fees for applications and renewals for small signs measuring 32 square feet or less. Currently, any sign, regardless of size, is subject to the initial application fee of $100 per face and the annual renewal fees in accordance with the fee and size schedule in subrule 117.6(2). Application and renewal fees are intended to help cover the cost of field reviews and program administration, but the effect of not charging fees for signs of this size will be minimal because so few applications are received. Small business operators who use small signs for advertising will be able to obtain permits in conforming areas at no charge. Local permit fees may vary.

Outdoor advertising permits—not transferrable and protection of property rights. The amendments add a sentence to subrule 117.6(3) to make clear that permits are not transferrable to other advertising signs or to other locations. While it is rare, Department staff have found permit plates which have been moved from one sign to another, or signs (with permit plates attached) moved to other locations. The application forms identify a precise location and the subsequent field reviews by Department staff are conducted to ensure that location requirements are met.

Language is also added to subrule 117.6(3) for the protection of property rights (for advertising purposes) when highway improvement projects are pending. Currently, if a highway improvement project is planned and the future design will result in a change in eligibility of an area for the issuance of advertising permits, those issuances cease once the Department completes the plans for the project and appraisers and buyers begin to contact property owners for the acquisition of additional right-of-way. Because this process can occur months or years in advance of the actual construction work, property owners and sign companies are being prevented from what could be construed as a legal use of property at the time the application is made. The new language narrows the window of time for denials so that permits may be issued for conforming locations up until the time when contact occurs with the property owner for the purposes of acquiring the additional right-of-way at the site of the proposed sign.

Destroyed sign. This rule making adds new subrule 117.6(10), which alters the method of handling for signs which have been damaged by storms. The Federal Highway Administration requires states to have a method of determining when a nonconforming sign is destroyed and to have it removed. Existing protocol for Iowa is to assess damage following a storm to see if the repair cost for damaged plywood, poles, stringers, vinyl wrap, light ballasts, etc., exceeds 60 percent of the replacement cost (see definition of "reconstruction" in Iowa Code section 306C.10). If so, the permit is subject to cancellation and, if the area is not conforming, removal of the sign must follow. Damage assessments are labor intensive, are subjective, and cause delays in repairs, which can frustrate companies, landowners, and advertisers. In recent years, the Federal Highway Administration has worked with state regulators and stakeholders (Scenic America and Outdoor Advertising Association of America) to develop an easy "bright line" to

follow instead of using the more common method of having regulators sort through damaged parts to determine whether they are reusable and attempt to assign values to those parts, which may be cause for litigation. This new method involves a simple count of the broken support poles to determine if a given percentage of the total is reached. If so, the sign is considered destroyed. A definition of "destroyed" (60 percent of supports broken) is added in rule 761—117.1(306B,306C), which falls within the Federal Highway Administration's recommended guidelines. New subrule 117.6(10) is added to replace the existing method of determining when a permit needs to be revoked and a sign needs to be removed.

Finally, the amendments amend the chapter's implementation sentence to include references to Iowa Code section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4868C**. No public comments were received. An additional item, Item 11, was added to correct a cross reference within subrule 117.7(3). The subsequent items were then renumbered as appropriate.

Adoption of Rule Making

This rule making was adopted by the Department on February 19, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. Although applications for advertising signs measuring 32 square feet or less in size will no longer be subject to fees, the average annual number of new advertising signs erected for this size has been fewer than five for the last eight years. Therefore, the effect to the Highway Beautification Fund will be minimal.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of "Destroyed" and "Widening" in rule **761—117.1(306B,306C)**:

"Destroyed" means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

"Widening" means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close

alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

ITEM 2. Amend rule **761—117.1(306B,306C)**, definitions of "Modification" and "Nonconforming sign," as follows:

"Modification" means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.

4. The addition of LED display capabilities to an advertising device is a modification.

5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

"Nonconforming sign" means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply ~~fully~~ with current ~~size and spacing~~ requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

ITEM 3. Amend subrule 117.2(2) as follows:

117.2(2) *Contact information.* Inquiries, requests for forms, and applications regarding this chapter shall be directed to the Advertising Management Section, ~~Office of~~ Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend rule **761—117.3(306B,306C)**, parenthetical implementation statute, as follows:

761—117.3(306B,306C,306D) General criteria.

ITEM 5. Amend paragraph **117.3(1)"l"** as follows:

l. No off-premises advertising device may be erected within the adjacent area of any primary highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway. However, if the off-premises advertising device was in existence at the time of the designation, subsequent permitting may occur in accordance with Iowa Code section 306C.18.

ITEM 6. Amend subrule 117.5(5) as follows:

117.5(5) *Advertising devices erected after July 1, 1972.* Except as otherwise provided in this chapter, an advertising device which is visible from the main traveled way of any primary highway shall not be erected after July 1, 1972, or subsequently maintained within the adjacent area unless the advertising device complies with the following:

a. and *b.* No change.

c. Spacing within city—interstate and freeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 250 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured ~~along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite~~ from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

d. Spacing outside city—interstate and freeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 500 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured ~~along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite~~ from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

e. Spacing within city—nonfreeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 100 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

f. Spacing outside city—nonfreeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 300 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

g. to *l.* No change.

ITEM 7. Amend paragraph **117.6(1)"a"** as follows:

a. A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of a primary highway. ~~However, only one application and permit are required for~~

~~a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.~~

ITEM 8. Amend subrule 117.6(2) as follows:

117.6(2) *Fees.* Fees are applicable to all advertising devices measuring over 32 square feet in size.

a. No change.

b. The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

Area of Sign	Annual Renewal Fee
~~Up~~ 33 to 375 square feet	$15
376 to 999 square feet	$25
1000 square feet or more	$50

For tri-vision signs, the area shall be calculated by multiplying the area of the face by three.

(1) and (2) No change.

c. and *d.* No change.

ITEM 9. Amend subrule 117.6(3) as follows:

117.6(3) *Permits to be issued.*

a. The department shall issue an outdoor advertising permit in accordance with Iowa Code section 306C.18. Permits shall not be transferrable to other advertising devices or to other locations.

b. No change.

c. The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

(1) The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

(2) Contact by department staff has been made with the property owner regarding compensation for the affected area.

(3) The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

(4) A construction contract for the project has been initiated by the department.

ITEM 10. Adopt the following **new** subrule 117.6(10):

117.6(10) *Destroyed sign.*

a. The permit for an advertising device which has been destroyed shall be revoked.

b. An advertising device which has been destroyed is in a condition which, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5).

c. An advertising device which has been damaged, but not destroyed, may be repaired. The repair shall not be deemed an act of reconstruction.

ITEM 11. Amend subrule 117.7(3) as follows:

117.7(3) *Service club and religious notices.* Service club and religious notices may be placed upon private property with the permission of the land owner provided the notice complies with the definition of "service club or religious notice" in rule 761—117.1(306B,306C), complies with the general criteria of rule 761—117.3(306B,306C,306D), and does not exceed eight square feet in area.

ITEM 12. Amend rule 761—117.10(17A,306C) as follows:

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

117.10(3) No change.

ITEM 13. Amend **761—Chapter 117**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

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